

Department of Permits and Development Management
111 West Chesapeake Avenue
Towson, Maryland 21204
Baltimore County, Maryland

In the Matter of

Jeanette E. Koch

Respondent

Civil Citation No. 65077

228 Regester Avenue

FINDINGS OF FACT AND CONCLUSIONS OF LAW
FINAL ORDER OF THE CODE ENFORCEMENT HEARING OFFICER

This matter came before the Baltimore County Code Enforcement Hearing Officer on October 28, 2009 for a Hearing on a citation for violations under the Baltimore County Zoning Regulations (BCZR) section 1B01.1D, failure to eliminate open dump/junkyard conditions; Baltimore County Code (BCC) section 13-7-312; 13-7-310; 13-4-201; 35-5-302 (a)(1); 35-5-302 (a)(3), failure to remove debris materials etc, failure to remove food source for rats, failure to cease infestation from property, failure to cease unsanitary conditions on residential property known as 228 Regester Avenue, 21212.

On September 23, 2009, pursuant to Baltimore County Code §3-6-205, Inspector Latoshia Rumsey-Scott issued a Code Enforcement & Inspections Citation. The citation was sent to the Respondent by 1st class mail to the last known address listed in the Maryland State Tax Assessment files.

The citation proposed a civil penalty of \$5,000.00 (five thousand dollars).

The following persons appeared for the Hearing and testified: Jeanette Koch, Respondent represented by Robert A. Brocato, Esquire; Latoshia Rumsey-Scott, Code Enforcement Officer, Baltimore County Department of Permits & Development Management; Rebecca Daniels, Code Enforcement Officer, Baltimore County Office of Community Conservation; Fred Hudson, Respondent's brother-in-law; and neighbors Joel and Natalie West; Gary Slovinsky; Rebecca Teaff; and Wendy Estano. Mr. J. Kemp, husband of Respondent, attended the Hearing.

After proper consideration of all the evidence and testimony presented, the Hearing Officer finds:

A. A Correction Notice was issued on August 18, 2009 for removal of open dump/junk yard, removal of accumulations of debris, removal of unsanitary conditions, cease rat infestation, remove bird seed/other food for rats, remove furniture from front porch, remove wheelbarrow with stagnant water from yard, remove food source for rodents. This Citation was issued on September 23, 2009.

B. Inspector Latoshia Rumsey-Scott testified that there are seven prior code enforcement cases for this property, dating back to 2001. This is a rowhome and the open dump, debris, and rat infestation affects numerous neighbors. After the Correction Notice was issued, tarpaulins were put on top of some of the junk piles. Re-inspection October 27, just prior to this Hearing, found improvement with the property cleaned up, particularly in the rear of the property.

C. Photographs in the file show large quantities of junk and debris in the yard, including bagged garbage, plastic bags, old flowerpots and buckets, broken furniture, pieces of rusty ornamental fencing, and an old rug. This violates prohibitions against the accumulation of junk, trash and debris on residential property, and prohibitions against creation of possible harborage for rats. Photographs taken October 27 just prior to this Hearing show significant improvement, with most of the junk and debris removed, but broken wood furniture is visible in one photograph. Photographs also show rat holes along the fence.

D. Joel West and Natalie West live next door at 230 Regester Avenue. Mr. West testified that they have always had a friendly relationship with the Kochs and have made every effort to resolve problems with them. They purchased their house a year and a half ago, during the winter when the yard next door looked okay. Now it would be impossible to sell their house because of the conditions next door. The Wests had a pest control company technician come inspect their property because they could smell a urine smell in the backyard. The technician said it's the smell of rats. The rat runs are visible under the fence. The rats have burrowed under the Wests' paved landing and caused damage. The Wests have paid \$499 to Western Pest Control for a one-year contract. The technician says the environment next door harbors rats. An August 19, 2009 email message in the file from the Western

technician states in part, “yes there is conducive conditions for rats in your neighbors yard and yes I did observe burrowing under your fence from your neighbors yard.” Mrs. West testified that she is a physician at Johns Hopkins Hospital and is concerned about health risks. The Wests have a toddler and an infant and are concerned about the risk of rat bite fever and other diseases. The Wests are also concerned about the living conditions inside the Kochs’ home.

E. Gary Slovinsky lives two doors down, at 224 Regester. Mr. Slovinsky testified that he has lived in the neighborhood for four years and sees rats every year. He sets traps and limits bird food in his feeders.

F. Rebecca Teaff lives across the alley from Respondent. She testified that the trash and debris and overgrowth in Respondent’s back yard, and cleanup efforts, are a repeated cycle. The trash and debris does not stay in Respondent’s yard. Rats are affecting her property. Her neighbor at 227 Dumbarton Road had rats chew through her air conditioner. She wants a healthy neighborhood and wants this property cleaned up.

G. Wendy Estano lives at 226 Regester. She testified that this is the third hearing she’s attended about code violations at Respondent’s property. Previous fines have been suspended after the property was cleaned up. Respondent has buckets of stagnant water in the yard. Fence panels and tarpaulins are used to block the view of the junk and debris. Respondents walk across her yard because their own yard isn’t cleared. There is a flurry of activity to clean up only when there is a court date. The neighbors want a penalty and a hard line drawn.

H. Mr. West testified that Respondents have a rental U-Haul van that has been parked on a side street or behind their property for a year and a half. It moves around the neighborhood. It does have valid tags.

I. Inspector Rebecca Daniels testified that she has talked with Respondent’s attorney about this property and the possibility of providing financial assistance for repairs and renovations. She further testified that the Office of Community Conservation can only assist if houses are in compliance

with code requirements. The interior of the property has to be clean. The owner has admitted during prior inspection visit that there is junk, trash and debris inside the house, and Inspector Daniels will be pursuing that as a separate code enforcement action.

J. Respondent's attorney, Robert Brocato, stated that the property has been brought into compliance with code requirements. He stated that Respondent had Ehrlich Pest Control Company come on October 9, to put down bait and inspect, and that the rat infestation has been addressed. He requested that this Citation be held in abeyance for 60-90 days to ensure continued compliance.

K. Mr. Fred Hudson is the brother of Respondent's husband, Mr. Kemp, who also resides in the property. Mr. Hudson testified that he lives in Lutherville and that he has recently become involved in this situation. He testified that the rat issue is emotional and that an unkempt yard naturally raises suspicions that it would be the source of the rats, but that the rat problem has been treated. The message has been received and the property will be cleaned up.

L. Inspector Scott stated that the Department wants Respondent to have a one year contract with a licensed pest control company and wants a civil penalty to be imposed if the property goes out of compliance. Inspector Daniels stated that the County will offer voluntary services to the family but that she will be inspecting the property for interior code compliance.

M. The Hearing Officer gave Respondent two days following this Hearing to submit a plan or other information for ensuring correction and compliance with county code requirements. Respondent submitted receipts from the Ehrlich Pest Control Company showing that two bait stations and tracking powder were provided on October 9, 2009 for a \$250.00 payment, and a second visit was made on October 27 for "extra service ... under a service warranty." This was a "Corrective Service" and not part of an ongoing maintenance service or contract. Notes from the Ehrlich technician on October 9 state in part, "treated as needed. Baited ... noticed no rat burrows in yard, or around garage." Notes from the Ehrlich technician on October 27 state, "Treated as needed.... No activity found."

N. Review of the file shows that this property has been the subject of repeated code enforcement cases since at least 2001. Respondent has been given multiple allowances of rescinded and reduced penalties by bringing the property back into compliance with minimum code requirements after Citations and Hearings. Despite this, the evidence clearly shows that Respondent has filled her yard with junk, trash, and debris, and that her property has provided rat harborage and has contributed to an infestation problem in the neighborhood. The evidence and testimony that rats are coming from Respondent's property is more persuasive than the note from Respondent's pest control technician, and the Hearing Officer finds that there is an active rat infestation on Respondent's property that requires abatement. Respondent is required by County law to abate the rat infestation and close all rat holes and burrows. Baltimore County Code Section 13-7-305, Section 13-7-306. Respondent must continue to treat the infestation until it is abated; periodic inspections should continue until the rat infestation is fully abated, and holes and burrows are closed.

O. Because Respondent did clean up the property prior to this Hearing, the proposed civil penalty will be reduced. However, because of the prior history of repeat violation, the proposed civil penalty will not be entirely rescinded and the reduction will be contingent on code compliance for six months. Respondent will be given the opportunity to receive a further reduction if Respondent enters into a one-year contract with a licensed pest control company.

IT IS ORDERED by the Code Enforcement Hearing Officer that a civil penalty of up to \$5,000.00 (five thousand dollars) be imposed on the following terms and schedule:

(1) \$500.00 (five hundred dollars) civil penalty; AND

(2) \$1,000.00 (one thousand dollars) civil penalty UNLESS Respondent enters into a minimum one-year service and maintenance contract with a licensed pest control company to abate exterior rat infestation, and provides documentation of that contract to the County by November 20, 2009; AND

(3) \$3,500.00 (three thousand five hundred dollars) civil penalty if re-inspection between the date of this Order and June 1, 2010 finds the exterior premises in violation of code requirements, with an impermissible accumulation of junk, trash, debris, or garbage.

IT IS FURTHER ORDERED that if Respondent does not abate the rat infestation, the County may enter the property for the purpose of abating the infestation, at Respondent's expense.

IT IS FURTHER ORDERED that if not paid within thirty days of billing, the civil penalties AND any expenses incurred by Baltimore County, as authorized above, shall be imposed and placed as a lien upon the property.

IT IS FURTHER ORDERED that the County inspect the property to determine whether the violations have been corrected.

ORDERED this 9th day of November 2009.

Signed: ORIGINAL SIGNED
Margaret Z. Ferguson
Baltimore County Hearing Officer

NOTICE TO RESPONDENT: The Respondent is advised that (1) pursuant to §3-6-206(g)(2) of the Baltimore County Code, the Respondent may make written application to the Director of the Department of Permits & Development Management within 10 days to modify or amend this order and (2) pursuant to §3-6-301(a), Baltimore County Code, the Respondent may appeal this order to the Baltimore County Board of Appeals within fifteen (15) days from the date of this order; any such appeal requires the filing of a petition setting forth the grounds for appeal, payment of a filing fee of \$150 and the posting of security to satisfy the penalty assessed.